

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

ANDRES BELLO HERNANDEZ)	
)	
vs.)	Case No. 5:08-CV-08018-RDP-HGD
)	
UNITED STATES OF AMERICA)	

ORDER

On December 23, 2008, the magistrate judge's report and recommendation was entered and the parties were allowed therein eleven (11) days in which to file objections to the recommendations made by the magistrate judge. To date, neither Petitioner nor Respondent have filed objections.

After careful consideration of the record in this case and the magistrate judge's report and recommendation, with a single exception not relevant here,¹ the court hereby **ADOPTS** the report of the magistrate judge. The court further **ACCEPTS** the recommendations of the magistrate judge and it is therefore

¹The exception relates to the report and recommendation's suggestion that after the granting of the Government's motion under § 5K1.1 and 18 U.S.C. § 3553(e) (Doc. #504 in 5:06-CR-317-RDP-HGD) the Guideline Range changed to 97-121 months. Actually, at sentencing, the court granted the departure motion and found that the appropriate Offense Level was 30, which when combined with a Criminal History Category of II, produced a new Guideline Range of 108-135 months. (Doc. #547 at pp. 7-8 of 5:06-CR-317-RDP-HGD). The court then sentenced Petitioner to 128 months. (*Id.* at p. 12). Thus, in this case the low-end of the relevant Guideline Range was 108 months, but the court was not bound by the Government's recommendation and instead found that 128 months was a reasonable sentence "taking into account the very large amount of drugs that were found with the defendant at the time of the arrest and also the information that was admitted by the defendant about his other drug trafficking offenses and his criminal history category." (*Id.*).

ORDERED, ADJUDGED and DECREED that the Motion to Vacate, Set Aside or Correct Sentence, filed pursuant to 28 U.S.C. § 2255, is due to be and is hereby **DENIED** and this action **DISMISSED**.

DONE and ORDERED this 28th day of January, 2009.

A handwritten signature in black ink, appearing to read 'R. David Proctor', written over a horizontal line.

R. DAVID PROCTOR
UNITED STATES DISTRICT JUDGE